

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

ALPHONS R. MUELLER

Claim No. **CU** -1261

Decision No. **CU** -1225

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by ALPHONS R. MUELLER, and is based upon the loss of interests in a bond issued by the Cuba Northern Railways Company and one issued by the Cuba Railroad Company. Claimant has been a national of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government

of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

On the basis of evidence of record, the Commission finds that claimant is, and since prior to October 13, 1960, has been the owner of a bond in the original face amount of \$1,000.00, issued by the Cuba Northern Railways Company and known as a "First Mortgage Gold Bond, 4%, due June 30, 1970" (originally First Mortgage Gold Bond, 5-1/2%, due June 1, 1942), issued under an Indenture of July 1, 1927, with the First National City Bank of New York as Trustee. The bond in question is No. M 5858, bearing coupons numbered 17-33, inclusive, due on and after June 1, 1959.

The evidence of record also discloses that claimant is, and since prior to October 13, 1960, has been the owner of a bond in the original face amount of \$1,000.00, issued by the Cuba Railroad Company and known as First Mortgage Gold Bond, 4%, due June 30, 1970, issued under a Supplemental Indenture of July 1, 1952, with Guaranty Trust Company of New York as Trustee (formerly First Mortgage, 50 Year Gold Bond issued September 18, 1902, 5%, due July 1, 1952, with the Morton Trust Company of New York as Trustee). The bond in question is No. 11080 with attached interest coupons Nos. 17 through 33 inclusive, due on and after July 1, 1959. Pursuant to the Supplemental Indenture of July 1, 1952, the bond is overstamped to set forth an outstanding principal balance of \$460.00, and to provide total annual interest of $\frac{1}{4}\%$ of the outstanding principal balance.

The Cuba Railroad Company, incorporated in the State of New Jersey, was wholly owned by Consolidated Railroads of Cuba (Ferrocarriles Consolidados de Cuba), a Cuban corporation. The Cuba Railroad Company thus would not qualify as a national of the United States under Section 502(1) of the Act which defines the term "national of the United States" as including "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are

citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

Consolidated Railroads of Cuba also owned Cuba Northern Railways Company (Ferrocarriles Del Norte de Cuba), a Cuban corporation. The latter in turn owned the majority interest in Guantanamo and Western Railroad Company (Cia. Ferrocarrilera de Guantanamo y Occidente), incorporated in the State of Maine. Thus, none of these railroads qualify as a national of the United States under Section 502(1) of the Act.

The record in this claim discloses that the Cuba Northern Railways Company issued a 5-1/2% Gold Bond due June 1, 1942. The record also reflects that on April 4, 1933, Cuba declared a moratorium on mortgage indebtedness, which was later extended to June 1942. On June 4, 1940 a new Cuban Constitution was adopted, having certain "Transitory Provisions" which extended the maturity date on mortgage indebtedness in excess of \$800,000 to June 30, 1970 and provided for interest at 1% and amortization by certain annual installments.

In 1952, pursuant to a "Plan for Readjustment of Bonded Debt of the Company", the 5-1/2% Gold Bond was replaced by one First Mortgage Gold Bond, 4%, due June 30, 1970. The interest on this bond was payable on June 1 and December 1 of each year. The last payment of interest on the bond was made on December 1, 1958.

The record shows that Cuba Northern Railways Company was nationalized by Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960. Claimant's bond, acquired prior to nationalization of this Company, represented the debt of a nationalized enterprise as defined in Section 502(3) of the Act (supra).

The Commission concludes that as a result of the nationalization of the properties of the Cuba Northern Railways Company, claimant suffered

a loss in connection with his bond within the meaning of Title V of the Act. (See the Claim of Kentucky Home Mutual Life Insurance Company, FCSC Claim No. CU-1339.)

Evidence of record establishes that the subject bond had an outstanding principal balance of \$635.00 on October 13, 1960, the date of loss.

The Commission therefore finds that the amount of the unpaid indebtedness on claimant's bond on October 13, 1960, the date of loss, was \$682.56, including the principal amounts of \$635.00 on the bond, and the interest due on the bond in the amount of \$47.56 for the period December 1, 1958 to October 13, 1960.

The record shows that the properties of Cuba Railroad Company were listed as nationalized by Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960. Claimant's bond, therefore represents a debt which was a charge on property which has been nationalized by the Government of Cuba as defined in Section 502(3) of the Act (supra).

The Commission concludes that as a result of the nationalization of the properties of the Cuba Railroad Company, claimant suffered a loss in connection with his Cuba Railroad Company bond within the meaning of Title V of the Act. (See the Claim of Joseph Gans, FCSC Claim No. CU-1720.)

With regard to the value of the bond on the date of loss, information available to the Commission discloses that no part of the outstanding principal balance was ever paid, and that the last payment of interest was made on January 1, 1959.

The Commission, therefore, finds that the amount of the unpaid indebtedness on claimant's bond on October 13, 1960, the date of loss, was \$492.86, including the principal amount of \$460.00, and the interest due on the bond in the amount of \$32.86.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement. (See the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from October 13, 1960, the date of loss, to the date on which provisions are made for settlement thereof.

The records of the Commission disclose that claimant is also participating, as a consenting stockholder, in a claim filed by the Vertientes-Camaguey Sugar Company (FCSC Claim No. CU-0624). Any and all rights claimant may have as a stockholder in that corporation will be determined in that claim.

CERTIFICATION OF LOSS

The Commission certifies that ALPHONS R. MUELLER suffered a loss as a result of action of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Thousand One Hundred Seventy-Five Dollars and Forty-Two Cents (\$1,175.42) with interest thereon at 6% per annum from October 13, 1960 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

FEB 14 1968

Edward J. Re

Edward J. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

NOTICE TO TREASURY DEPARTMENT: The above listed bonds may have been returned to claimant and no payment should be made until they are resubmitted.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

**This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on MAR 18 1968**

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